

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: Wednesday, August 18, 2004

Division: BOCC

Bulk Item: Yes ☐ No ☒

Department: Commissioner Rice, District 4

AGENDA ITEM WORDING: Approval to enter into contract as sole provider with The Noise Consultancy, LLC as recommended by the County Attorney, to review our current noise ordinance, and draft a new, enforceable noise ordinance for unincorporated Monroe County.

ITEM BACKGROUND: The County noise control ordinance has undergone many revisions through the years, the latest in 2001. The noise ordinance currently in effect essentially begins noise restriction requirements at 11:00 PM weeknights and is not easily enforceable. In a search of the Noise Pollution Clearinghouse (NPC) website (www.nonoise.org), the Noise Consultancy was the only firm that included *noise ordinance drafting* in its services assuring an enforceable and reasonable ordinance. The County needs to tighten up the noise ordinance and refine it to deter and eliminate to the largest degree possible problematic sources of noise pollution for the benefit of the citizens of unincorporated Monroe County.

PREVIOUS RELEVANT BOCC ACTION: Original Noise ordinance and revisions: # 011-1978, #007-1980, #041-1986, #033-1987, #025-1989, #031-1989, #023-1992, # 032-2000, #002-2001.

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:

TOTAL COST: _____

BUDGETED: Yes ☐ No ☐

COST TO COUNTY: _____

SOURCE OF FUNDS: _____

REVENUE PRODUCING: Yes ☐ No ☐ **AMOUNT PER MONTH** _____ **Year** _____

APPROVED BY: County Atty _____ OMB/Purchasing _____ Risk Management _____

DIVISION DIRECTOR APPROVAL:


(David P. Rice, Commissioner, District 4)

DOCUMENTATION: Included ☐ To Follow ☐ Not Required ☐

DISPOSITION: _____

AGENDA ITEM# L12

THE NOISE CONSULTANCY, LLC | [home](#)

JUL - 9 2004

Flemington, NJ 08822
(908) 237-0298

About Us

The Noise Consultancy (TNC) offers assistance in the following areas: all aspects of community noise enforcement, noise ordinance drafting, expert testimony and studies, certified sound level measurements and surveys, permit applications and Environmental Impact Statements, impacted resident advocacy, and occupational hearing conservation programs.

TNC President, Eric M. Zwierling ([resume](#)), is the Director of the Rutgers Noise Technical Assistance Center (RNTAC), Department of Environmental Sciences, Rutgers - The State University of New Jersey. He has been engaged in private consulting since 1992, most recently as the expert witness for the City of New York Law Department. Mr. Zwierling and TNC staff conducted extensive sound level measurements and audio recording in Manhattan, prepared a 156 page expert report, and affidavits. Mr. Zwierling was deposed for over 7 hours, and assisted in deposing plaintiffs' expert. TNC staff conducted a sound demonstration for the Court in Times Square. The *Opinion and Order* of the Court quoted extensively from TNC submissions in ruling in our favor [99 Civ. 3381 (SAS)(2/15/00)].

Mr. Zwierling assists municipalities to draft noise ordinances that are simple, enforceable, efficient, and tailored to the specific needs of the jurisdiction. Once the code is in place, he then trains their enforcement personnel in the techniques and strategies of sound level measurements for enforcement purposes, including courtroom tactics. He has trained over 2,500 enforcement officers in the past 11 years. The certification conferred by the Rutgers University course, *Community Noise Enforcement*, is required for all enforcement agents in the state of New Jersey (pursuant to N.J.A.C. 7:29-2.11), and is recognized in numerous jurisdictions across the United States. As far as we know, this is the only certification program of national scope in existence. Recently, Mr. Zwierling has developed and delivered the new certification course *Vehicular Noise Enforcement* for Twinsburg, OH and North Salem, NY. Aside from the courses offered every quarter at Rutgers University, the RNTAC has recently offered on-site certification course for these cities: Seattle, WA, Gainesville, FL, Long Beach, and Anchorage, AK. We assisted every one of these jurisdictions amend/write their ordinance, and the ordinance we helped Long Beach develop has already withstood one challenge in New York State Court and two challenges in Federal Court.

Mr. Zwierling often delivers invited lectures at the Environmental and Occupational Health Sciences Institute at the University of Medicine and Dentistry of New Jersey, and has presented invited lecture/workshops for the American Association of Code Enforcement, the Michigan Municipal League, the New York State Association of Towns, the Michigan Association of Municipal Lawyers and the International Association of Municipal Lawyers. He has been interviewed by the CBS Evening News, the New York Times, Consumer Reports, Governing, and various newspapers. His work was featured in a CBC documentary "Sound and Fury," and The Learning Channel recently filmed his course "Vehicular Sound Enforcement" for a documentary that aired in October of 2001.

TNC Vice President, Stephen M. Szulecki, is formerly the Director of the Air Pollution Training Program and Assistant Instructor on the Faculty, Department of Environmental Sciences, Rutgers - The State University of New Jersey. As Director of the Air Pollution Training Program he has trained in excess of 3,000 professionals over a ten-year period. He is an *Approved Noise Control Investigator* by the New Jersey Department of Environmental Protection, pursuant to N.J.A.C. 7:29-2.11. Mr. Szulecki's has conducted sound studies for: City of New York Law Department; New York City Police Department; Ethicon Corporation; Bristol Myers Squibb; McDonalds Corporation; Costanza Residential; Ryan Homes; Republic Services of New Jersey; New England Waste; and Magic Disposal, among others. These studies involved acoustical concepts that, among others, included: source and ambient sound level measurements; barrier attenuation; distance, ground and atmospheric attenuation; and, sound transmission loss through structures. He has conducted HUD compliance

measurements and analyses, and has also constructed numerous acoustical models including the permit application for Browning Ferris Industries' Tremley Point Marine Facility.

Mr. Szulecki has extensive residential construction knowledge that he has used in consultation with clients in improving the acoustical envelope of new construction or renovations.

Mr. Szulecki served as an independent consultant to Rutgers University on a research project entitled: "Road Noise Educational Outreach Program," for the New Jersey Department of Transportation. In this project he provided expertise in the areas of residential acoustical construction, the efficacy of low cost sound attenuation measures, and the development of training/outreach materials for professionals and the public at large.

Mr. Szulecki has extensive expertise in the field of air pollution measurement and control and continues to serve as a visiting lecturer in air pollution training courses offered by Rutgers University and the University of Medicine and Dentistry of New Jersey. He has developed training materials for courses such as Visible Emissions Evaluation and Odor Enforcement. He has also served as a reviewer of training materials for the USEPA, Air Pollution Training Institute.

Mr. Szulecki has offered expert testimony in municipal court and at local planning board meetings.

TNC Staff, Dawn Mason, is currently the Director of the Air Training Program, Department of Environmental Sciences, Rutgers - The State University of New Jersey. She is an *Approved Noise Control Investigator* by the New Jersey Department of Environmental Protection, pursuant to N.J.A.C. 7:29-2.11, and holds an undergraduate degree in Engineering, and is pursuing her Masters Degree in Environmental Engineering.

TNC Staff, Paul Sauers, holds the degree of Masters of Library Science (MLS), and is an information/reference specialist. He has served on the reference staff of Rutgers University and municipal libraries.

Mr. Sauers currently also serves as an hourly employee at the Rutgers Noise Technical Assistance Center (RNTAC), and his duties include literature searches on several noise-related topics, as needed. He has conducted extensive searches in that capacity, in various areas of environmental and transportation noise. As a result, he has good familiarity with the available resources and has established working relationships with non-profit, business and government transportation officials. His knowledge of the invisible web (databases/information not found in search engines), and the development of pathfinders (guides to the literature on particular topics) has proven invaluable.

He is an *Approved Noise Control Investigator* by the New Jersey Department of Environmental Protection, pursuant to N.J.A.C. 7:29-2.11, and currently serves as the grader for all of the courses offered by the RNTAC.

The Noise Consultancy, LLC

(908)237-0298

NoiseConsultancy@aol.com

www.noiseconsultancy.com

NOISE ORDINANCE DEVELOPMENT

- Extensive code writing experience
- Simple, easily enforced codes
- On-site ordinance development workshops
- Code Drafting Tip for 2002

The President of The Noise Consultancy has reviewed hundreds of municipal noise ordinances and helped amend or draft numerous codes ranging from Anchorage to Gainesville, and Seattle to Lafayette (LA). He has assisted in the amendment of the New Jersey Noise Code (N.J.A.C. 7:29), and was the lead author of 'Local Noise Enforcement Options and Model Noise Ordinance With Pre-Approved Language for the State of New Jersey'. The code he helped the city of Long Beach (NY) draft, has withstood challenges in New York State and Federal courts, finally resolving a long-standing noise problem for the city.

Importantly, we've not done this from an Ivory Tower confine - we've spent hundreds of hours in the field with enforcement officers. We know that what looks good on paper or in an acoustics textbook may not necessarily be enforceable in the field. If the code is overly complex and demanding, the entire enforcement program will be hamstrung at best and still-born at worst. Investigations will be rare and only in response to egregious repeat violations, and the code's complexity may require that investigations have to be conducted by outside consultants. The codes we draft are designed to be enforceable by any motivated and trained enforcement officer.

In order for any enforcement program to be effective in regulating noise sources, enforcement actions must be regular and reliable. And that means it must be enforceable by any officer who has received the proper training. Only then will the regulated community respect the jurisdiction's commitment to noise abatement and make the effort to come into compliance. In fact, a credible enforcement program will often result in the regulated community self-policing to avoid enforcement, thus dramatically extending the impact and efficacy of the program. If the code is relatively simple, facilities can easily monitor their own compliance, and make adjustments as necessary.

We offer a full range of ordinance development services ranging from a simple review of your existing ordinance to drafting an entirely new one. It is important to us that your ordinance is drafted to address the specific needs of your jurisdiction. We offer on-site ordinance development seminars. We can come to your jurisdiction, present a short educational session on the basics of sound as it applies to noise regulation including some theoretical and practical approaches to noise codes, and then discuss your specific requirements with all interested parties. We can go in the field and visit specific problem areas, or conduct measurements or demonstrations. It is then up to you whether you want your staff to draft the ordinance with our guidance, or have us draft it for your approval.

There are few sources of noise that generate more complaints than 'boom cars,' and to a lesser extent, 'boom boxes'. We offer the following Code Drafting Tip to address this issue.

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CODE DRAFTING TIP FOR 2004

"Boom Cars - Boom Boxes"

Discussion

There are few sources of noise that generate more complaints than broadcasting vehicles. Loud music emanating from a vehicle is disruptive to the peace and quiet of a community. Highly amplified music in a vehicle poses both a public safety and public health risk: it may impair the ability of the operator in such a vehicle to hear emergency signals.; and, studies have shown that hearing loss among college age students is now common and the incidence is increasing.

Enforcement of a performance (decibel denominated) standard is difficult in this situation, as the sound is transient and the source is mobile. While some jurisdictions enforce a curblane sound level limit, the enforcement agency must set up in advance in the location at which they suspect a violation may occur. While enforcement and deterrence is extremely effective during the operation of such an enforcement action, it is only effective at the time and in the place this action occurs. Outside of these parameters, deterrence is minimal.

An alternative enforcement standard is required to address this specific sound source, if enforcement is to be regular and predictable, thus providing the desired deterrence. If the deterrent was not successful, the enforcement standard must lead to successful prosecution. After a careful review of precedents and challenges in other jurisdictions, it was clear that any successful standard would have to be objective, specific and easily understood. A "plainly audible" standard has been applied in numerous jurisdictions across the United States, and this standard has been held to be neither vague nor overbroad (*State v. Ewing*, 914 P.2d 549, Haw. 1996). It is also clearly understandable to those it is intended to regulate. There is no subjectivity to the determination of a plainly audible sound source; there is no value judgment associated with such a determination, as there might be if the standard were "disturbing" or "loud and raucous."

This is an extremely powerful tool now made available to address a demonstrated problem. This provision, however, should only be enforced by police. Curbing a vehicle is potentially confrontational, and may represent an unacceptable risk to an enforcement officer who is untrained to handle this situation.

A full discussion of this topic can be found in the following paper:

Zwerling, E.M. 2000. Regulation of Amplified Sound Sources. Proceedings of Noise-Con 2000. Acoustical Society of America/ Institute of Noise Control Engineering. Newport Beach, CA. December 3-5, 2000.

CODE PROVISIONS

DEFINITION

"Plainly audible" means any sound that can be detected by a person using his or her unaided hearing faculties. As an example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the enforcement officer need not determine the title of a song, specific words, or the artist performing the song. The detection of the rhythmic base component of the music is sufficient to constitute a plainly audible sound.

RESTRICTED USES AND ACTIVITIES

(1) Personal or commercial music amplification or reproduction equipment shall not be operated in such a manner that it is plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 a.m. and 10:00 p.m. Between the hours of 10:00 p.m. and 8:00 a.m., sound from such equipment shall not be plainly audible at a distance of 25 feet in any direction from the operator.

{Note: These distances may be a bit restrictive, as most cars that are overtly broadcasting can be heard at distances significantly exceeding 100 feet. You may choose to set the permissible audible distance at 100 feet daytime and 50 feet night time, which will allow for a reasonable amount of amplification.}

(2) Self-contained, portable, hand-held music or sound amplification or reproduction equipment shall not be operated on a public space or public right-of-way in such a manner as to be plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 a.m. and 10:00 p.m. Between the hours of 10:00 p.m. and 8:00 a.m., sound from such equipment shall not be plainly audible by any person other than the operator.

ADOPT THESE PROVISIONS IN YOUR JURISDICTION. OFFER YOUR RESIDENTS A BETTER QUALITY OF LIFE.

**This website page has now been extensively referenced
in a U.S. Department of Justice document:**

Loud Car Stereos

This is a very valuable resource in our efforts to Quiet the Commons

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JUL 12 2004

July 12, 2004

Richard Collins
Monroe County Attorney
PO Box 1026
Key West, FL 33041-1026

RECEIVED

JUL 12 2004

MONROE COUNTY ATTORNEY

RE: ACOUSTICAL CONSULTING SERVICES

Dear Mr. Collins:

This letter is in response to your Request For Proposal regarding consulting services to assist with amendments to Monroe County's Noise Code. Based upon our conversations, I propose to provide the following services which I believe will result in achieving the desired endpoint:

- One day of on-site consultation, scheduled at a mutually convenient date;
- Present a short educational session on the basics of sound as it applies to noise regulation including some theoretical and practical approaches to noise codes, and then discuss your specific requirements with all interested parties;
- Tour the jurisdiction, specifically the problem areas;
- Conduct sound level measurements of problem sources &/or conduct a demonstration of the methodology of sound level measurement for enforcement purposes;
- Review whatever relevant documents are provided by Monroe County
- Draft amendments to the Noise Code, based upon all information gathered;
- Perform whatever redrafting is necessary, until the Code amendments are adopted;
- Prepare an "Analysis of Public Comments," if written comments are received and if a formal response is desired;
- Remain available for consultation via phone or e-mail.

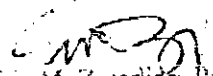
The inclusive price for these services and all related expenses is \$8,500. Additional services beyond the Scope above will be invoiced at \$125/hour. Additional days of on-site consultation will be invoiced at \$1,250/day plus expenses. Payment for all services are due 45 days after invoicing.

If you find these terms to be acceptable, please sign this letter, which will serve as our Letter of Agreement, and return it by mail or fax.

I would also like to invite you to visit our website at www.noiseconsultancy.com to review the full suite of services we provide.

I look forward to the possibility of working with Monroe County, and assisting you in your effort to deliver a better quality of life to your residents.

Sincerely,


Eric M. Zwierling, President
The Noise Consultancy, LLC



Air and Noise Training Programs
 Department of Environmental Sciences • Cook College
 14 College Farm Road • New Brunswick • New Jersey • 08901-8551
 Phone: 732/932-8065 • Fax: 732/932-8644

JUL 12 2004

July 12, 2004

RECEIVED

Richard Collins
 Monroe County Attorney
 PO Box 1026
 Key West, FL 33041-1026

JUL 12 2004

MONROE COUNTY ATTORNEY

Dear Mr. Collins:

This letter is in response to your request for a proposal regarding an on-site presentation of the certification course *Community Noise Enforcement*.

The officers will be fully trained in the techniques, technology and strategies of sound level measurement and reporting for the purpose of enforcing a noise code. The course and course manual will be customized to include Monroe County's new Noise Codes. Also included will be the following items: 3 days of instruction; use of Rutgers' noise level meters during the course, and course manuals to all attendees. I will develop a Noise Measurement Report Form specific to your ordinance for enforcement officers to use in the field. After the course, exams and Noise Measurement Report Forms (the field practical exam) will be graded and returned, along with certificates for those receiving passing grades.

The course fee for up to 10 students will be \$4250. The tuition for additional attendees will be \$275 per person, with additional discounts if the number is sufficient. This course is also offered at Rutgers University on a quarterly basis, and the tuition is \$440/person for non-New Jersey governmental agents.

Expenses will be separate items including: travel, lodging, mileage and per diem. Airfare is the biggest variable and the range may be from \$200-\$1200, however, a check of prices today shows that flights are available for \$250-350. A reasonable estimate follows: airfare \$300; hotel 4 x \$130 = \$520; rental car 4 x \$45 = \$180; airport parking \$55; Mileage/tolls to airport \$24; per diem meals \$132; for a total of \$1211.

If you approve of this proposal, sign it noting your acceptance and fax it back to me at (732)932-8644. Please also call me so we can discuss mutually convenient dates for the course.

In the classroom we will need: a blackboard or flipchart; an overhead projector (for films, not computer); a battery-powered boom box; and a VCR/TV for one of the days. Coffee in or near the classroom is very important for breaks.

We will conduct a number of field exercises. If the weather is disagreeable, we will need an alternative indoor location- something with a relatively large open space like a bus barn or gymnasium.

This course has been approved for Continuing Education Credits by the FDLLE, and if you desire that I pursue such designation for this course, please let me know. I do believe for such credits, the course must be offered at one of their regional law enforcement academies such as St. Johns College (St. Augustine), where I recently taught the course.

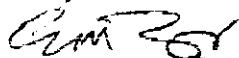


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Please don't hesitate to call me to discuss any issues pertaining to this proposal. The best way to reach me is on my cell phone (732)266-1762, as I will be in DeKalb County (GA) all this week teaching the certification and recertification courses.

I look forward to the possibility of assisting you in your desire to deliver a better quality of life to your residents.

Sincerely,



Eric M. Zwierling, Director
Rutgers Noise Technical Assistance Center